

U.S. Department of Justice

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August 28, 2020

BY ECF

The Honorable Mary Kay Vyskocil
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

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Re: *Pfizer Inc. v. United States Department of Health and Human
Services, et al.*, No. 20 Civ. 4920 (MKV)

Dear Judge Vyskocil:

This Office represents the defendants (the “Government”) in the above-referenced action. We write on behalf of all the parties in this matter, after having conferred with Plaintiff’s counsel, jointly and respectfully to request the Court’s endorsement of a proposed schedule for the resolution of this matter through dispositive motion briefing.¹ More specifically, the parties anticipate that Plaintiff will file a motion for summary judgment, and the Government will file a cross-motion to dismiss and for summary judgment.²

¹ The parties respectfully request that the Court deem its pre-motion conference requirement to be fulfilled by this joint correspondence (thereby tolling the Government’s time to answer or otherwise respond to the Complaint), since the parties have conferred and agree that dispositive motion practice is the appropriate avenue for the resolution of this case. However, if the Court would prefer that the parties submit substantive pre-motion conference letters before the Court enters any briefing schedule, the parties will be happy to make those submissions.

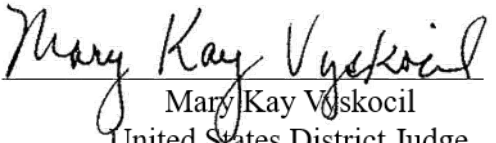
² The parties also respectfully submit that because Plaintiff’s claims brought pursuant to the Constitution and the Administrative Procedure Act (“APA”) present only legal issues regarding the lawfulness of the Government’s actions in light of the administrative record (which will be filed according to the schedule proposed herein), no Local Civil Rule 56.1 statement is needed. *See, e.g., Just Bagels Mfg., Inc. v. Mayorkas*, 900 F. Supp. 2d 363, 372 n.7 (S.D.N.Y. 2012) (opining that cases based on the review of an administrative record “present[] only a question of law” and directing parties not to submit Local Rule 56.1 statements); *Karpova v. Snow*, 402 F. Supp. 2d 459, 465 (S.D.N.Y. 2005) (summary

The parties acknowledge that in the normal course, Defendants would move first, and indeed, the Government intends to move to dismiss some or all of Plaintiff's claims pursuant to Federal Rule of Civil Procedure 12. However, as Plaintiff previewed in its correspondence dated July 30, 2020 (ECF No. 25), Defendant the United States Health and Human Services Office of Inspector General ("HHS OIG") expects to soon issue the written advisory opinion regarding Plaintiff's proposed co-pay assistance program that Plaintiff requested in August 2019. The parties recognize that the content of this advisory opinion (which will be part of the administrative record in this case) may affect the claims or arguments that Pfizer, as the Plaintiff, asserts, and to which the Government must therefore respond. Thus, the parties agree that the interests of judicial efficiency and clarity may best be served by the following proposed procedure and schedule:³

- HHS OIG will issue the relevant advisory opinion by September 18, 2020.
- The Government will compile and file the administrative record in this matter by October 2, 2020.⁴
- Plaintiff will file its Motion for Summary Judgment by October 16, 2020.
- The Government will file its combined Opposition and Cross-Motion to Dismiss and for Summary Judgment by November 16, 2020.
- Plaintiff will file its combined Reply and Opposition by December 7, 2020.
- The Government will file its Reply by December 21, 2020.

The Court endorses the Parties' proposed schedule. The Court is unlikely to extend the deadlines unless there are issues related to the issuance of the advisory opinion. All "combined" memoranda must be no longer than 35 pages. The other submissions should comply with the Court's Individual Practices.

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United States District Judge

judgment appropriate without submission of statements of undisputed material facts in APA cases because the administrative record provides the Court with "all of the information necessary to determine whether material disputes of fact exist"). However, in the event the Court determines that Rule 56.1 statements are required in connection with the parties' motions, they will provide such statements.

³ Pfizer understands that at least one party intends on seeking leave to file an amicus brief. As Pfizer gathers additional information concerning the number and scope of such briefs, the parties will confer and alert the Court as soon as possible if they wish to modify the schedule.

⁴ The Government fully anticipates being able to meet these proposed deadlines for the issuance of the advisory opinion and filing of the administrative record. However, these proposed dates depend in part on, among other things, Plaintiff's timely responses to certain routine requests by HHS OIG relating to the finalization of the advisory opinion. The Government will promptly confer with Plaintiff and notify the Court if any issues arise that may interfere with these proposed dates.

Respectfully submitted,

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